



## IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: BRIAN H MAY	Case Number: 20SL-CC04645
Plaintiff/Petitioner: ARCHDIOCESE OF ST. LOUIS	Plaintiff's/Petitioner's Attorney/Address KEVIN MICHAEL CUSHING SUITE 1800 120 S CENTRAL AVE SAINT LOUIS, MO 63105
Defendant/Respondent: THE ULTIMATE SOFTWARE GROUP, INC.	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Breach of Contract	

(Date File Stamp)

## Summons in Civil Case

The State of Missouri to: THE ULTIMATE SOFTWARE GROUP, INC.

Alias:

R/A: JEFF CITY FILING, INC.  
222 E. DUNKLIN, SUITE 102  
JEFFERSON CITY, MO 65101

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

**SPECIAL NEEDS:** If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

09-SEP-2020

Date

Further Information:

LES

*Joan P. Hilary*  
Clerk

## Sheriff's or Server's Return

**Note to serving officer:** Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with \_\_\_\_\_ a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to \_\_\_\_\_

\_\_\_\_\_ (name) \_\_\_\_\_ (title).

☐ other \_\_\_\_\_

Served at \_\_\_\_\_ (address)

in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

**Must be sworn before a notary public if not served by an authorized officer:**

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_

Date

Notary Public

**Sheriff's Fees, if applicable**

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)

**Total** \$ \_\_\_\_\_

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

ARCHDIOCESE OF ST. LOUIS,	)	
a Non-Profit Corporation	)	Cause No.
	)	
	)	Division No.
Plaintiff,	)	
	)	<b>JURY TRIAL DEMANDED</b>
vs.	)	
	)	
THE ULTIMATE SOFTWARE GROUP, INC.	)	
<u>Registered Agent</u>	)	
Jeff City Filing, Inc.	)	
222 E. Dunklin, Suite 102	)	
Jefferson City, Missouri 65101	)	
	)	
	)	
Defendant.	)	

**PETITION**

COMES NOW Plaintiff Archdiocese of St. Louis, by and through its undersigned counsel, and for its Petition against Defendant The Ultimate Software Group, Inc. hereby states as follows:

**PARTIES**

1. Plaintiff Archdiocese of St. Louis (the “*Archdiocese*”) is a Missouri non-profit corporation in good standing.
2. Defendant The Ultimate Software Group, Inc. (“*Ultimate Software*”) is a corporation organized under the laws of Delaware with its principal place of business in the state of Florida.

**JURISDICTION AND VENUE**

3. Jurisdiction is proper in this Court pursuant MO. REV. STAT. § 506.500.1(1) and (2) in that Ultimate Software transacts business in the State of Missouri and has made contracts

within the state of Missouri. As set forth herein, the business transacted in Missouri and the contracts made in Missouri give rise to the claims stated.

4. Venue is proper in this Court pursuant to MO. REV. STAT. § 508.010.2(4) as the defendant is not a resident of the state of Missouri and no tort claim is alleged herein.

### **FACTUAL BACKGROUND**

#### ***A. The Archdiocese***

5. The Archdiocese is the Roman Catholic archdiocese that covers St. Louis County, St. Louis City, and numerous surrounding counties and communities.

6. The Archdiocese employs over 10,000 people throughout more than 250 organizations. These employees work at, among other locations, schools, charitable agencies, health care facilities and 180 parishes.

7. During a single pay period, an Archdiocese employee may work numerous different shifts (*e.g.*, day shift, overnight shift) and may work in different positions (*e.g.*, medical aide, assistant). Additionally, an employee may work at different facilities or may incur overtime pay during a single pay period.

8. All of those variables, and additional variables, impact the hourly rate of pay for each of the Archdiocese's employees.

9. Given the significant number of employees and the numerous variables related to hourly pay with respect to each employee, the Archdiocese requires sophisticated and complex software for payroll, benefits and human resources purposes.

#### ***B. The Archdiocese searches for new payroll and human resources system.***

10. In 2018, the Archdiocese sought to upgrade its payroll and human resources software systems. It began a search for new vendors and software systems for payroll, benefits, human resources and other functions.

11. The Archdiocese undertook significant due diligence to locate new payroll and human resource systems. It engaged a broker to assist in its search and issued a detailed Request for Proposal (the “**RFP**”) for vendors to review.

12. The RFP set forth thorough requirements for the Archdiocese’s needs and provided comprehensive information about its employees’ schedules, shifts, hourly rate differentials and other variables.

13. During its search, the Archdiocese met with multiple potential vendors, including Ultimate Software.

14. Ultimate Software holds itself out as a developer and provider of “award winning” human resources and payroll software and solutions, including its “UltiPro” software system.

15. Ultimate Software boasts that its UltiPro software and services “unite[ ] all aspects of HR, Payroll and talent management in one comprehensive cloud solution.”

16. Ultimate Software further represents that it can “quickly and efficiently” combine “the technology, tools and resources needed to get you up and running with [the] UltiPro...” software system.

17. In 2018, Ultimate Software and the Archdiocese met to discuss the Archdiocese’s needs and Ultimate Software’s services, products and software for payroll and human resource systems.

18. As set forth in its RFP, the Archdiocese again informed Ultimate Software of its specific requirements for payroll, benefits and human resource systems.

19. Ultimate Software represented that it understood the complexity of the system required and that its payroll and human resources software and services would be appropriate for the Archdiocese's needs.

20. Additionally, Ultimate Software told the Archdiocese that its clients included other archdioceses across the nation, including the Archdioceses of Baltimore and Atlanta.

**C. *The contract with Ultimate Software.***

21. Based on Ultimate Software's representations of its software's and systems' capabilities, suitability and functionality, on June 28, 2018, the Archdiocese and Ultimate Software entered into the Ultimate Software Group, Inc. SaaS Agreement (the "***Agreement***"). A true and correct copy of that Agreement (including its Exhibits A – I) is attached hereto as **Exhibit 1** and incorporated herein by reference.

22. Under the Agreement, Ultimate Software was to, among other things, provide software and support for (i) a Human Resources System (the "***HR System***"), (ii) a Timekeeping System (the "***Timekeeping System***"), and (iii) a Payroll System (the "***Payroll System***"). The HR System, Timekeeping System and Payroll System are collectively referred to herein as the "***System***").

23. The Agreement required Ultimate Software to provide services, equipment, training and support to launch the HR System, the Timekeeping System and the Payroll System for the Archdiocese.

24. Pursuant to the Agreement, Ultimate Software represented that it typically took nine (9) months to launch the System and the launch would be complete within 18 months.

25. By the terms of the Agreement, Ultimate Software's launch of the System was to occur in April 2019.

26. The Agreement was lucrative for Ultimate Software. Over its three-year initial term, Ultimate Software was to be paid over \$5 million for its System and services for the System.

27. The fee for the launch of the System, which was to occur in April 2019, alone was \$724,000.

***D. Ultimate Software begins to configure the System and to train the Archdiocese to use the System.***

28. In August 2018, representatives from Ultimate Software went onsite to the Archdiocese to conduct analysis in order to configure and set up the System in anticipation of the April 2019 launch date.

29. Following those onsite visits, Ultimate Software took months to attempt to configure and construct the System ahead of the scheduled April 2019 launch.

30. On January 9, 2019, the parties executed an amendment to the Agreement (the "***Amendment***"). Under the Amendment, the beginning of the launch was delayed several months from April 2019 to July 2019. Per the Amendment, the launch of the System was to be completed by July 2020. A true and correct copy of the Amendment is attached hereto as **Exhibit 2**.

31. Before the System could be launched and used, however, multiple tests of the Payroll System were required to ensure that the Payroll System could accurately process payroll for the Archdiocese and its employees.

32. In January 2019, Ultimate Software began training certain Archdiocese employees to use the Payroll System in preparation for the testing of the Payroll System.

33. In further preparation, Ultimate Software timeclocks for employees' use were received and installed at various locations within the Archdiocese's facilities.

***E. The Timekeeping and Payroll Systems fail initial testing.***

34. Given the complexity of the Payroll System and the number of Archdiocese employees, Ultimate Software and the Archdiocese decided to begin parallel testing of the Timekeeping and Payroll Systems at a single location, the Cardinal Ritter Senior Services (“*CRSS*”), an organization with 500 employees.

35. During the parallel Timekeeping System and Payroll System testing phase, employees were to “punch in” on the existing (and functioning) payroll system timeclocks and the new timeclocks for the Ultimate Software Timekeeping System and Payroll System. This permitted the Archdiocese and Ultimate Software to process timesheets and paychecks using both the current functioning system and the new Timekeeping System and Payroll System. The data from both systems were then compared to assess whether the Timekeeping System and the Payroll System were functioning properly and could be used to accurately process payroll.

36. This parallel testing phase was essential and had to be successfully completed in order for the Archdiocese to actually use Ultimate Software’s Payroll System and accurately process payroll for its employees.

37. In June 2019, training classes were held for some CRSS staff members to teach them how to use the newly installed timeclocks and to prepare for parallel testing of the Timekeeping System and the Payroll System. The training classes used materials created and provided by Ultimate Software.

38. The initial parallel Timekeeping System and Payroll System testing began on June 16, 2019. Four weeks of payroll data were to be captured for parallel testing purposes.

39. Almost immediately, however, the Archdiocese noticed that there were significant problems with the Timekeeping and Payroll Systems.



40. One major problem revealed by the initial parallel Payroll System testing was that the timeclocks provided by Ultimate Software did not capture shift differentials.

41. The Archdiocese's employees work numerous different shifts (*e.g.*, day shift, evening shift, overnight shift, double shift). An employee's hourly rate of pay is different based upon the shift worked. This is known as a shift differential.

42. Nearly 50% of the employees of CRSS are paid shift differentials during their daily shifts. As such, calculating shift differentials is a critical aspect of payroll for the Archdiocese's employees.

43. During the initial Payroll System parallel testing, the Timekeeping System and the Payroll System failed to capture shift differentials or correctly calculate the shift differentials for any of the employees. As a result, the entire four weeks' worth of parallel testing data was completely worthless.

44. Additionally, during the initial parallel testing, the Archdiocese learned that the timeclock training materials created and provided by Ultimate Software for the purpose of training employees to use Ultimate Software's timeclocks were incorrect.

45. Ultimate Software's training materials failed to include necessary steps that would allow shift differential data to be captured. As a result, the Timekeeping System and the Payroll System did not correctly collect data from the timeclocks.

46. Given these major issues, parallel payroll could not be processed using the Timekeeping System and the Payroll System.

47. These extensive failures of the initial testing of the Payroll System caused the Archdiocese to become seriously concerned about the Timekeeping System, the Payroll System and Ultimate Software's ability to launch the Timekeeping System or the Payroll System.

48. In July 2019, shortly after the initial Payroll System test failed, the Archdiocese informed Ultimate Software of its serious concerns, including the critical errors in processing shift differentials, the inaccurate training materials and the inability to test the Timekeeping System and Payroll System.

49. Thereafter, the Archdiocese sent detailed documentation about its concerns with the Payroll System and Ultimate Software's planning and training on the System.

50. In August 2019, Ultimate Software and the Archdiocese met to discuss the Archdiocese's concerns and the issues with the Timekeeping System and the Payroll System.

51. During that meeting, Ultimate Software stated that it would work to identify solutions.

52. Ultimate Software then proposed a new timeline for launching the System which did not include either the critical parallel testing to ensure the System worked and or the completion of testing before the System was launched.

53. The Archdiocese declined to accept the new timeline given that the timeline did not include the completion of important testing before the System was launched.

54. At the same time, given the issues in the initial testing and Ultimate Software's inability to provide a solution, the Archdiocese was forced to hire another consultant to work with Ultimate Software to identify solutions and assist with further testing of the Timekeeping System and Payroll System.

55. The Archdiocese incurred over \$90,000 in consulting fees for a consultant to attempt to assist Ultimate Software in launching its own Payroll System.

***F. The Timekeeping System and Payroll System fail the second round of testing.***

56. After the failure of the initial parallel testing of the Payroll System in June 2019, the Archdiocese planned a second test of the Timekeeping System and the Payroll System to begin on August 30, 2019.

57. Given the significant failures of the initial testing, the Archdiocese limited the second round of Payroll System testing to just 45 employees at CRSS, less than 1% of the total employees.

58. After the data was collected from the second round of Timekeeping System and Payroll System testing, the Archdiocese spent days auditing a subset of data collected by the Timekeeping System and Payroll System. This auditing checked the accuracy of the shift differentials to determine whether the Timekeeping System and Payroll System could be used to accurately run payroll.

59. The results of the second round of Payroll System testing were also disastrous. Of the test cases analyzed by the Archdiocese, error for employees with shift differentials were regularly found.

60. The errors from the second testing of the Timekeeping System and the Payroll System would have caused some employees to be overpaid and some employees to be underpaid if the Timekeeping System and the Payroll System were used to actually process payroll.

61. After the unsuccessful second round of testing, the Archdiocese again provided Ultimate Software with the documentation related to the issues with the Timekeeping System and the Payroll System.

***G. The results of the third round of testing are no better.***

62. After numerous calls and meetings with Ultimate Software, a third test of the Timekeeping System and the Payroll System was scheduled. The test was scheduled for October

2019 – the date when the Timekeeping System and the Payroll System should have been launched.

63. The third test only had 100 test cases, only a small fraction of the total number of the Archdiocese employees.

64. The results of the October 2019 test were no better than the prior tests. In fact, not a single test passed, and the Archdiocese immediately noticed significant errors.

65. One significant and recurring problem was the Timekeeping System's and the Payroll System's rounding of hours worked by employees. The Archdiocese made it clear to Ultimate Software that it would not underpay employees and that any rounding of hours worked must be "rounded up" so that rounding was in favor of the employee.

66. Yet, during the third test of the Timekeeping System and the Payroll System, the data showed that the Timekeeping System and the Payroll System regularly rounded down so that employees would have been underpaid if the Payroll System was used to process payroll.

67. At other times during the third round of testing, the Timekeeping System's and the Payroll System's rounding was inconsistent with the actual total hours worked by the employee as recorded by the timeclocks. This would have led to multiple instances of employees being either overpaid or underpaid if the Timekeeping System and the Payroll System were used to process payroll.

68. Rounding was not the only issue recognized during the third round of testing.

69. As during the first and second tests, the Timekeeping System and the Payroll System again failed to calculate daily shift differentials. This would have led to employees being both underpaid and overpaid if the Timekeeping System and the Payroll System had been used to process payroll.

70. For example, during the third test, the Timekeeping System and the Payroll System failed to calculate the shift differential for one employee who was assigned to work evening shifts throughout the pay period. As a result of this failure to calculate the shift differential for the evening shift, a payroll generated by the Timekeeping System and the Payroll System would have underpaid that employee by 11.35 hours.

71. The Timekeeping System and the Payroll System also inaccurately calculated paid time off allowances and vacation balances. These calculation errors led to vacation days balances being overstated in some tests and understated in other tests.

72. Given the failures of the Payroll System during these tests, the Archdiocese again reached out to Ultimate Software with its concerns about the Payroll Systems and the inability to achieve even a single successful test case.

73. Yet, no solutions were offered, and no subsequent tests of the Payroll System were ever accurate.

74. Additionally, Ultimate Software continued to push back the “launch date” and “go live” dates for the Timekeeping System and the Payroll System conceding that the Timekeeping System and the Payroll System, given all the testing required, could not “go live” any earlier than Spring 2020 – months after the promised date.

75. In the nearly 18-months since the Agreement was executed, not a single test cycle of the Payroll System had ever passed, meaning that at no point was payroll processed without error.

76. Ultimate Software could not provide solutions to fix the Timekeeping System and the Payroll System. Since the execution of the Agreement, the Archdiocese has been unable to process a single payroll using the Timekeeping System and the Payroll System and the

Timekeeping System and the Payroll System have no functionality for the Archdiocese whatsoever.

***H. The Archdiocese informs Ultimate Software of its numerous breaches of the Agreement.***

77. Under the Agreement, Ultimate Software was to provide the Archdiocese with sufficient computer infrastructure, equipment, software, network bandwidth and security to allow the Archdiocese to access and utilize the Timekeeping System and the Payroll System.

78. Under the Amendment, the launch of the Timekeeping System and the Payroll System was to begin in July 2019 and be completed in July 2020.

79. The Agreement provides that:

Either party has the right to terminate this Agreement upon thirty (30) days prior written notice upon any breach hereof by the other party, provided that the party in breach shall not have cured such breach during such thirty (30) day period.

80. The Agreement further provides that “the prevailing Party in any such action shall be entitled to recover its reasonable attorney’s fees and costs from the non-Prevailing Party.”

81. On July 17, 2019, the Archdiocese informed Ultimate Software of its numerous breaches of the Agreement and further informed Ultimate Software of its concerns with the Timekeeping System and the Payroll System and Ultimate Software’s planning for the launch of and use of the System.

82. Despite this, during the next thirty days, Ultimate Software was unable to correct its breaches and was unable to begin the launch of the Timekeeping System and the Payroll System at any time, much less by the deadline set forth in the Agreement and Amendment. In fact, in subsequent testing, the Timekeeping System and the Payroll System were unable to accurately process the payroll.

83. In August 2019 and October 2019, as well as during numerous weekly calls, the Archdiocese provided Ultimate Software with notices of the breaches of the Agreement and failures of the Timekeeping System and the Payroll System.

84. Even with these additional notices, Ultimate Software failed to cure its breaches and begin the launch of the Timekeeping System and the Payroll System.

85. On December 17, 2019, the Archdiocese's counsel sent Ultimate Software a letter outlining Ultimate Software's breaches of the Agreement.

86. Again, Ultimate Software failed to cure the breaches.

***I. The Archdiocese incurs significant damages.***

87. The inability to launch or implement the Timekeeping System and the Payroll System and Ultimate Software's repeated breaches of the Agreement have caused the Archdiocese to incur significant damages.

88. Since executing the Agreement, Ultimate Software has been paid over \$516,000 for a Timekeeping System and the Payroll System that has no functionality whatsoever.

89. In addition to these costs, the Archdiocese's employees have been forced to spend hundreds of hours working on the Timekeeping System and the Payroll System, including training, auditing, and working with Ultimate Software to attempt to solve the multiple errors embedded within Ultimate Software's Timekeeping System and Payroll System.

90. From August 2018 through November 2019, the costs for Archdiocese personnel working on the Payroll System have been over \$603,000.

**Count I**  
**(Breach of Contract)**

91. The Archdiocese alleges and incorporates by reference the allegations contained in paragraphs 1 through 90, as if fully set forth herein.

92. The Agreement, along with its Amendment, is a binding contract between the Archdiocese and Ultimate Software and is supported by valid consideration.

93. The Agreement provides that Ultimate Software is to provide software and services to the Archdiocese for Timekeeping, Payroll and HR Systems.

94. Ultimate Software breached the Agreement by, among other things, failing to provide the Timekeeping System and the Payroll System and software services for that Timekeeping System and that Payroll System as required by the Agreement. The Timekeeping System and the Payroll System are completely non-functional and cannot be launched or used.

95. Archdiocese has performed its obligations and conditions precedent with respect to the Agreement and is entitled to enforce the Agreement.

96. As a direct and proximate result of Ultimate Software's breaches of the Agreement, the Archdiocese has been damaged.

97. Under the Agreement, the Archdiocese is entitled to its attorneys' fees.

WHEREFORE, Plaintiff Archdiocese of St. Louis respectfully requests that a Judgment in its favor and against Ultimate Software be entered on Count I of this Petition, in an amount to be determined in this proceeding, including all amounts paid to Ultimate Software, all costs for payments to employees for training and work on the Timekeeping System and the Payroll System and payments to third-parties as they relate to the Timekeeping System and the Payroll System, for its costs to obtain relief in this action, including reasonable expenses and attorneys' fees, for all interest to which it is legally entitled, and for such other and further relief as is deemed proper under the circumstances.



**Count II**  
**(Breach of Warranty)**

98. The Archdiocese alleges and incorporates by reference the allegations contained in paragraphs 1 through 97, as if fully set forth herein.

99. The Agreement includes a warranty related to Ultimate Software's products and services (the "**Warranty**"). (Exhibit C to **Exhibit 1** at Section 11).

100. Ultimate Software's Warranty to the Archdiocese includes that:

Ultimate Software warrants that the []Services rendered will cause the UltiPro Software modules to substantially perform in accordance with the Ultimate Software on line documentation. Ultimate Software will make all necessary corrections to fulfill the foregoing warranty....

101. The Warranty further states that:

The UltiPro launch or consulting services provided hereunder by Ultimate Software will be performed in a manner consistent with the standards and the general customs and practices of the industry.

102. To date, Ultimate Software has failed to launch or provide services to launch its Timekeeping System and its Payroll System as warranted and has failed to cause its Timekeeping System and its Payroll System to substantially perform as promised as warranted. In fact, the Timekeeping System and the Payroll System cannot perform at all and have no functionality whatsoever.

103. Additionally, Ultimate Software has failed to provide launch or consulting services in a manner consistent with the standards and the general practices of the industry in that, among other things, it has failed to begin to launch the Timekeeping System and the Payroll System and it cannot complete the launch of the Timekeeping System and the Payroll System.

104. By failing to provide a Timekeeping System or a Payroll System, make the necessary corrections to fulfill its warranty and provide the launch and consulting services required in the Agreement, Ultimate Software has breached its warranty to the Archdiocese.

105. Ultimate Software was put on notice of its breach of the warranty.

106. The Archdiocese has performed its obligations and conditions precedent with respect to the Agreement and is entitled to enforce the Agreement.

107. As a direct and proximate result of Ultimate Software's breaches of the Agreement, the Archdiocese has been damaged.

108. Under the Agreement, the Archdiocese is entitled to its attorneys' fees.

WHEREFORE, Plaintiff Archdiocese of St. Louis respectfully requests that a Judgment in its favor and against Ultimate Software be entered on Count II of this Petition, in an amount to be determined in this proceeding, including all amounts paid to Ultimate Software, all costs for payments to employees for training and work on the Timekeeping System and the Payroll System and payments to third-parties as they relate to the Timekeeping System and the Payroll System, for its costs to obtain relief in this action, including reasonable expenses and attorneys' fees, for all interest to which it is legally entitled, and for such other and further relief as is deemed proper under the circumstances.

**COUNT VIII**  
**(Breach of Implied Warranty)**

109. The Archdiocese alleges and incorporates by reference the allegations contained in paragraphs 1 through 108, as if fully set forth herein.

110. Ultimate Software owed the Archdiocese an implied warranty of fitness for a particular purpose, namely that the Timekeeping System, the Payroll System, timeclocks and System were fit for their particular purposes, including for the human resources uses and processing the payroll of the Archdiocese

111. Upon information and belief, Ultimate Software knew or had reason to know of the particular purposes of its software, the Payroll System, timeclocks and System. Further,

Ultimate Software's skill and judgment was relied upon to select and configure the appropriate software, Timekeeping System, Payroll System and System.

112. The Timekeeping System, Payroll System, timeclocks, System and software were not fit for their particular purposes and Ultimate Software was put on notice that the Timekeeping System, Payroll System, timeclocks, System and software were not fit for their particular purpose.

113. Ultimate Software's breach of this implied warranty caused the Archdiocese's damages.

114. Any waiver, disclaimer, exclusion, limitation, modification and/or exclusive remedy provisions are invalid.

WHEREFORE, Plaintiff Archdiocese of St. Louis respectfully requests that a Judgment in its favor and against Ultimate Software be entered on Count III of this Petition, in an amount to be determined in this proceeding, including all amounts paid to Ultimate Software, all costs for payments to employees for training and work on the Timekeeping System and the Payroll System and payments to third-parties as they relate to the Timekeeping System and the Payroll System, for its costs to obtain relief in this action, including reasonable expenses and attorneys' fees, for all interest to which it is legally entitled, and for such other and further relief as is deemed proper under the circumstances.

Dated: September 4, 2020

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ Kevin M. Cushing  
Gerard T. Carmody, #24769  
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*Attorneys for Plaintiff Archdiocese of St. Louis*

Intertrust

## Service of Process Transmittal Form

To: The Ultimate Software Group, Inc.

Service Forwarded to Client On: 10 September 2020

Forwarded by: Email

**The following was received by Intertrust Corporate Services Delaware Ltd. for The Ultimate Software Group, Inc. the state of Missouri.**

**Title of Action:** Summons in Civil Case

**Document(s) Served:** Summons in Civil Case

**Court/Agency:** 21<sup>st</sup> Judicial Circuit Court, St. Louis County, Missouri

**Docket:** 20SL-CC04645

**Delivery Method:** Process Server

**Plaintiff's Attorney:** Kevin Michael Cushing, 120 South Central Avenue, Suite 1800, St. Louis, MO 63105

**Date of Service:** 10 September 2020

**Due Date:** 11 October 2020

The information contained in the Summary Transmittal Form is for informational purposes only. This information should not be considered a legal opinion. Intertrust Corporate Services Delaware Ltd. does not provide legal advice.



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20SL-CC04645 - ARCHDIOCESE OF ST. LOUIS V THE ULTIMATE SOFTWARE G (E-CASE)

- |                             |   |                                |  |                                     |                             |   |                                 |   |
|-----------------------------|---|--------------------------------|--|-------------------------------------|-----------------------------|---|---------------------------------|---|
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09/18/2020 ☐ **Summons Personally Served**

Document ID - 20-SMCC-8408; Served To - THE ULTIMATE SOFTWARE GROUP, INC.; Server - ; Served Date - 10-SEP-20; Served Time - 00:00:00; Service Type - Special Process Server; Reason Description - Served

☐ [Entry of Appearance Filed](#)

Entry of Appearance; Electronic Filing Certificate of Service.

**Filed By:** GERARD T CARMODY

**On Behalf Of:** ARCHDIOCESE OF ST. LOUIS

☐ [Entry of Appearance Filed](#)

**Filed By:** MEGHAN M. LAMPING

**On Behalf Of:** ARCHDIOCESE OF ST. LOUIS

☐ [Notice of Service](#)

Memorandum to Clerk; Affidavit of Service; Electronic Filing Certificate of Service.

**Filed By:** MEGHAN M. LAMPING

09/09/2020 ☐ [Summons Issued-Circuit](#)

Document ID: 20-SMCC-8408, for THE ULTIMATE SOFTWARE GROUP, INC..Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

09/04/2020 ☐ **Confid Filing Info Sheet Filed**

**Filed By:** KEVIN MICHAEL CUSHING

☐ [Motion Special Process Server](#)

Request for Appointment of Process Server.

**Filed By:** KEVIN MICHAEL CUSHING

**On Behalf Of:** ARCHDIOCESE OF ST. LOUIS

☐ [Pet Filed in Circuit Ct](#)

Petition; Exhibit 1; Exhibit 2.

☐ **Judge Assigned**

DIV 1

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

ARCHDIOCESE OF ST. LOUIS,  
a Non-Profit Corporation

Plaintiff,

vs.

THE ULTIMATE SOFTWARE GROUP, INC.,

Defendant.

Cause No. 20SL-CC04645

Division No. 1

**MEMORANDUM TO CLERK**

COMES NOW Plaintiff Archdiocese of St. Louis, by and through its undersigned counsel, and hereby files the attached Server's Affidavit of Service indicating service of Summons and Petition upon Defendant The Ultimate Software Group, Inc. on September 10, 2020.

Dated: September 18, 2020

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ Meghan M. Lamping  
Gerard T. Carmody, #24769  
Kevin M. Cushing, #27930  
Meghan M. Lamping, #59987  
120 South Central Avenue, Suite 1800  
St. Louis, Missouri 63105  
(314) 854-8600 Telephone  
(314) 854-8660 Facsimile  
gtc@carmodymacdonald.com  
kmc@carmodymacdonald.com  
mml@carmodymacdonald.com

*Attorneys for Plaintiff Archdiocese of St. Louis*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 18<sup>th</sup> day of September 2020, the foregoing was sent via U.S. mail, postage prepaid to:

The Ultimate Software Group, Inc.  
c/o: Jeff City Filing, Inc. Registered Agent  
222 E. Dunklin, Suite 102  
Jefferson City, MO 65101

/s/ Meghan M. Lamping  
Meghan M. Lamping



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Cause No. 20SL-CC04645

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**ENTRY OF APPEARANCE**

COMES NOW Meghan M. Lamping of the law firm of Carmody MacDonald P.C., and  
hereby enters her appearance on behalf of Plaintiff Archdiocese of St. Louis.

Dated: September 18, 2020

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ Meghan M. Lamping  
Gerard T. Carmody, #24769  
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*Attorneys for Plaintiff Archdiocese of St. Louis*

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/s/ Meghan M. Lamping  
Meghan M. Lamping

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Plaintiff,

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Defendant.

Cause No. 20SL-CC04645

Division No. 1

**ENTRY OF APPEARANCE**

COMES NOW Gerard T. Carmody of the law firm of Carmody MacDonald P.C., and  
hereby enters his appearance on behalf of Plaintiff Archdiocese of St. Louis.

Dated: September 18, 2020

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ Gerard T. Carmody  
Gerard T. Carmody, #24769  
Kevin M. Cushing, #27930  
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*Attorneys for Plaintiff Archdiocese of St. Louis*

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Jefferson City, MO 65101

/s/ Gerard T. Carmody  
Gerard T. Carmody